

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SURRINDER ARORA,

Plaintiff,

Case No. 15-cv-13137

v.

HONORABLE STEPHEN J. MURPHY, III

HENRY FORD HEALTH SYSTEM, et al.,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S MOTION FOR REHEARING** (document no. 32)

Plaintiff Surrinder Arora ("Arora") filed the complaint in the present action on June 19, 2015. Compl., ECF No. 1-1. Under Civil Rule 4, Arora had 120 days from the date the complaint was filed, or until November 13, 2015, to identify five John Does ("Doe Defendants") as parties to the case and serve them. On September 28, the Court denied Arora's motion to extend time to serve the Doe Defendants because Arora "has not offered any indication that she could identify the Doe Defendants through discovery and she has not shown good cause for the failure of service." Order, ECF No. 12. The Court also maintained that Arora had "until November 13, 2015 to ascertain the identities of the five Doe Defendants and to serve them," and failure to do so would result in the complaint being "dismissed *without* prejudice as to these defendants." *Id.* at 2 (emphasis added).

Arora failed to meet the deadline, and on November 16, 2015, the Court dismissed the Doe Defendants *with prejudice* for failure to prosecute. Order, ECF No. 28. On November 23, 2015, Arora filed a Motion for Rehearing of Order Dismissing Doe Defendants From Case. Mot. Rehearing, ECF No. 32. Arora argues that the Court should have dismissed the Doe Defendants *without prejudice* given the Court's dismissal language

in the September 28 order. In her motion, Arora also stated that she "is in process of filing certificate of service as to the said service," and attached as an exhibit (1) the USPS return receipts, and (2) a Certificate of Service stating that the certificate was served on the newly identified defendants—Bruce Jones, Kathy Oswald, and Cindy Hodges Harrison—on November 21. *Id.*

On November 30, Arora properly filed a Certificate of Service with the Clerk as to these newly added defendants and attached USPS return receipts showing that she had served the newly added defendants on November 12, one day before the deadline under Civil Rule 4. The Clerk entered the certificate on December 1.¹ Because Arora served the newly added defendants within the time allowed under Civil Rule 4, the Court will grant Arora's motion, instruct the Clerk to add the new defendants to the case, and allow the newly added defendants until December 18, 2015 to file an answer.

Despite the language in September 28 order, however, it remains within the Court's inherent authority to *sua sponte* dismiss a suit with prejudice for failure to prosecute. *First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 512 n.7 (6th Cir. 2002) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991)). Until and unless Arora properly files a Certificate of Service as to the two remaining Doe Defendants with proof that they were served within the time allowed under Civil Rule 4, the Court will not add these defendants to the case.

¹ On December 3, the Court erroneously issued an order denying Arora's motion for rehearing without noticing Arora's Certificate of Service entered on December 1. Accordingly, the Court will issue the present order, strike the previous order from the record, and allow the newly added defendants until December 18, 2015 to file an answer.

ORDER

WHEREFORE, it is hereby **ORDERED** that Plaintiff's Motion for Rehearing (document no. 32) is **GRANTED IN PART AND DENIED IN PART**.

IT IS FURTHER ORDERED that the Clerk shall add Bruce Jones, Kathy Oswald, and Cindy Hodges Harrison as defendants to the instant matter.

IT IS FURTHER ORDERED that the newly added defendants shall have until December 18, 2015 to **FILE** an answer.

IT IS FURTHER ORDERED that the Order entered on December 3, 2015 (document no. 34) is **STRICKEN**.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: December 10, 2015

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on December 10, 2015, by electronic and/or ordinary mail.

s/Carol Cohron
Case Manager